



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

*Overruled by
V-1200*

Honorable W. P. Rutledge
County Judge
Irion County
Mertzon, Texas

Dear Sir:

Opinion No. O-4475
Re: Fire fighting equipment may
be purchased by county and
warrants issued therefor to
be retired out of the general
fund.

Your request for an opinion is predicated upon a letter from you to Honorable George H. Sheppard, Comptroller of Public Accounts, and forwarded to us for answer. We quote the following pertinent provisions from your letter:

"The Legislature of 1941, in regular session duly passed House bill No. 262, empowering commissioners' courts to purchase and operate fire fighting equipment for use outside the limits of any city, village or town, and by arrangement with the governing bodies of such towns, villages and cities, for joint use.

"The bill in question is extremely vague inasmuch as it provides for the purchase of such equipment, though not the method of payment therefor, therefore it appears that any powers granted commissioners' courts are by implication only, and we are very uncertain as to procedure.

" . . .

"A legal opinion given us by Hughes, Hardeman & Wilson, Attorneys of San Angelo, which is inclosed for your inspection, states that in their opinion that time warrants must be issued against the general fund of the county, in the sum voted, and if their contention is correct, it is going

to place this county in a tight spot, as expenditures long since ear marked from such fund, necessary to the operation of the county administration, far exceeds receipts therein.

" . . . "

It is difficult to ascertain the exact question submitted but we conclude that the primary question is the manner in which the purchase of fire fighting equipment can be financed.

You advise by supplemental letter of April 2, 1942, that the election was held on the 21st day of February, 1942, pursuant to House Bill No. 262, supra, and that said election carried but that the Commissioners' Court is still uncertain as to the proper procedure or method of financing such purchases.

Article 2351a-1, Vernon's Annotated Civil Statutes, provides that the Commissioners' Court shall have authority to furnish fire protection to the citizens of the county residing outside the city limits of any city, town or village. It provides that the Commissioners' Court shall have authority to enter into contracts with the cities, towns and villages for the use of the city equipment upon such contract basis as the respective governing bodies might agree upon or "to purchase fire trucks and other fire fighting equipment by first advertising and receiving bids thereon as provided by law". It is further provided:

" . . . That any fire equipment purchased by any county shall be done only by a majority vote of property owning taxpayers and qualified voters of such county at a county wide election called for such purpose."

The statute is silent as to how such purchases can be financed and hence we must look to the statutes dealing with county finances in general. We have found no constitutional or statutory provisions for the issuance of bonds for such purpose, in the absence of which we must hold that bonds cannot be issued.

It is a well established rule of law in this State that a county subject to the express restrictions imposed by

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the Constitution and general laws has the implied power to issue time warrants in payment for improvements it is expressly authorized to construct, provided the applicable regulations relating to the issuance of such warrants are observed. *San Patricio County v. McClane*, 58 Tex. 243; *Lasiter v. Lopez*, 217 S. W. 373; *Adams v. McGill*, 146 S. W. (2d) 332. We believe such authorities are controlling here.

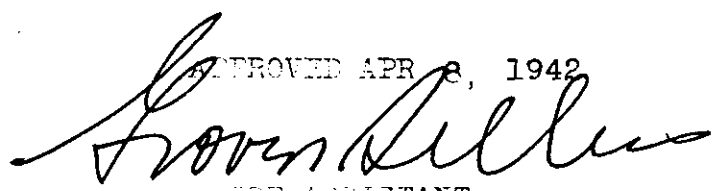
Article 2368a, Vernon's Annotated Civil Statutes, commonly called the bond and warrant law, sets forth the procedure for the issuance of warrants which are to be retired out of current funds or those funds other than current which are to accrue to the general revenue fund. It is provided that a tax must be levied and collected to pay the interest and principal as it matures. Such tax so levied and collected is a part of the general fund and hence is governed by the constitutional and statutory limitations of twenty-five cents on the One Hundred Dollar valuation. See Constitution, Article VIII, Section 9, and Article 2352, Vernon's Annotated Civil Statutes.


It is our opinion that the purchase of the fire fighting equipment desired can be purchased after a majority vote of the qualified voters has authorized such purchase but that it must be paid for out of the general fund or by the issuance of warrants to be paid ultimately out of the general fund as above pointed out.

We wish to thank you for enclosing the opinion prepared by Hughes, Hardeman & Wilson, with which we have agreed.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED APR 8, 1942

 DEPUTY ASSISTANT
 ATTORNEY GENERAL

BY 
 Lloyd Armstrong
 Assistant

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